

1 STEPHEN C. STEINBERG (SBN 230656)  
2 *ssteinberg@bzbm.com*  
3 TIFFANY S. HANSEN (SBN 292850)  
4 *thansen@bzbm.com*  
5 BARTKO ZANKEL BUNZEL & MILLER  
6 A Professional Law Corporation  
7 One Embarcadero Center, Suite 800  
8 San Francisco, California 94111  
9 Telephone: (415) 956-1900  
Facsimile: (415) 956-1152  
10 MARK S. PALMER (SBN 203256)  
11 *mark@palmerlex.com*  
4 Meadow Drive  
12 Mill Valley, CA 94941  
Telephone: (415) 336.7002  
Facsimile: (415) 634-1671

13 Attorneys for Defendants and Counter-Claimants  
14 PAUL REICHE III and ROBERT FREDERICK FORD

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

STARDOCK SYSTEMS, INC.,  
Plaintiff,  
v.  
PAUL REICHE III and ROBERT  
FREDERICK FORD,  
Defendants.

Case No. 4:17-CV-07025-SBA

**DECLARATION OF PAUL REICHE III  
IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S EX  
PARTE MOTION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER TO  
SHOW CAUSE WHY PRELIMINARY  
INJUNCTION SHOULD NOT BE  
GRANTED**

PAUL REICHE III and ROBERT  
FREDERICK FORD,  
Counter-Claimants,  
v.  
STARDOCK SYSTEMS, INC.,  
Counter-Defendant.

Complaint Filed: Dec. 8, 2017  
Trial Date: June 24, 2019

1 I, Paul Reiche III, declare as follows:

2 1. The matters in this Declaration are true of my own personal knowledge, and if  
 3 called upon as a witness, I could and would competently testify thereto.

4 ***Creation and Development of Star Control and Star Control II (“Star Control I and II”)***

5 2. In the Summer of 1988, I created the concept for the Star Control computer game  
 6 and made a proposal to develop it to multiple video game publishing companies, including  
 7 Accolade.

8 3. On October 7, 1988, Accolade and I entered into a License Agreement attached as  
 9 **Exhibit 1** (“1988 License Agreement”), whereby I (the “Developer”) agreed to develop *Star*  
 10 *Control* and two other computer games and to grant Accolade (the “Publisher”) an exclusive  
 11 license to publish such games in exchange for Accolade paying certain royalties and advances to  
 12 me. If, at any point, Accolade’s sale of the games generated *less than* \$1,000 per year in royalties,  
 13 the license would expire and all rights would revert back to me. The 1988 License Agreement  
 14 provided that “[Reiche] shall be the owner of the copyright and all other proprietary rights in the  
 15 Work” – the three computer software programs – and that Accolade would own whatever  
 16 trademark it adopted for each game.

17 4. Starting around February 1989 through June 1990, my longtime business partner,  
 18 Robert Frederick Ford (“Fred”), and I created and developed *Star Control*, and Accolade  
 19 published the game around July 1, 1990.

20 5. *Star Control* is a space combat game that was an innovative hybrid of action and  
 21 strategy involving various alien species with unique names, appearances, ships, weapons, and  
 22 backstories, in which players used the ships and weapons to battle against each other or the  
 23 artificial intelligence built into the game. There is also a pure action part of the game called  
 24 “Melee” in which one player controls a fleet of “Alliance” ships while the other player controls a  
 25 fleet of “Hierarchy” ships. Each player selects one ship to start, and the ships fight until one ship  
 26 lost and was destroyed. The losing player then picks one of their remaining ships and the battle  
 27 continues. When one player runs out of ships, that player loses and the game is over. This mode  
 28 of gameplay was unique when we created and released *Star Control*, as far as I recall.

1       6.     From around the Summer of 1990 through late 1992, Fred and I created and  
 2 developed *Star Control II* as the second game under the 1988 License Agreement, and Accolade  
 3 published the game around November 1, 1992.

4       7.     *Star Control II* is a story-driven space exploration adventure game in which players  
 5 explore the galaxy, discovering stars and planets from which they collect resources, interact with  
 6 various alien species along the way, some of which came from *Star Control* and others which  
 7 were new, and engage in space combat with them when necessary. Each of the alien species has a  
 8 unique name, appearance, ship(s), weapons, backstory, and conversational style. Below are the  
 9 names and examples of screenshots of the alien species:



1       8.     *Star Control II* also includes a space combat portion called “Super Melee” similar  
 2 to “Melee” in *Star Control*, in which players can create, save, and load their own fleets of ships  
 3 from any alien race in the game. Each fleet or team has a “team budget” and “ship costs,” so that  
 4 teams are balanced in power. Players can also name their teams to personalize them.

5       9.     In both Melee in *Star Control* and Super Melee in *Star Control II*, once players  
 6 select their teams, they go to combat mode. In combat mode, players each control their ships’  
 7 maneuvering, attacks with various weapons, and special powers. The screen is divided into two  
 8 parts, which the left side covering 75-80% of the entire screen and showing ships moving in space,  
 9 with a star background, a planet, and asteroids. The right side of the screen is the “status bar”  
 10 showing the condition of both ships, one on the top half, the other on the bottom half. Each ship  
 11 status area shows the name of the ship, its silhouette, its crew, battery status, and a “Captain’s  
 12 Window” showing the alien captain controlling the ship. As far as I know, no other game had a  
 13 screen display, layout, and functionality like this before, or since (except for Stardock’s *Origins*  
 14 beta initially called “Super Melee” and then “Fleet Battles” as discussed below).

15      10.    During this entire period and through the present, Fred and I have been business  
 16 partners and have always split any advances or royalties from *Star Control* equally.

17      11.    Fred and I were the primary authors of most of the creative materials incorporated  
 18 into both *Star Control I and II*, including the game design, story, art, sound effects, software code,  
 19 and other materials.

20      12.    For example, in creating and developing the games, I personally created the names,  
 21 initial concepts, written descriptions, and sketches of every character in the games, as well as their  
 22 history, physical and cultural details, and conversation design and text specifications. I also wrote  
 23 a majority of the dialogue for the characters, and illustrated a majority of the ships, among other  
 24 things.

25      13.    In addition to co-leading the development of the games with me and acting as one  
 26 of the producers, Fred personally wrote all of the code for both *Star Control I and II*, as far as we  
 27 can recall.

14. Fred and I hired other talented people who contributed in various ways and degrees to the games as more specifically described and credited in each game's respective game manual. For example, some of the contributors helped write and/or illustrate some of the dialogue, and helped illustrate some of the ship images. To the best of my recollection, everyone who contributed creative content to the games agreed to assign any copyrights to their material to Fred and me at that time, and have since signed written agreements confirming this.

15. Thus, aside from a small amount of music in *Star Control II* which we licensed, all copyrights to *Star Control I and II* are and have always been owned by Fred and me.

9        16.      As required by the 1988 License Agreement, Accolade placed on each copy of *Star*  
10      *Control* the copyright notice “© 1990 Paul Reiche III & Fred Ford” and on each copy of *Star*  
11      *Control II* the copyright notice “© 1992 Paul Reiche III & Fred Ford.” As far as I know, no one  
12      has ever claimed these copyright notices were inaccurate until Stardock filed the present case.

13        17. *Star Control I and II* were both successful in terms of sales, and received  
14 substantial critical acclaim at the time of their release and afterwards.

15        18.     On November 19, 1993, Accolade and I entered into Addendum No. 1 to the 1988  
16 License Agreement, a copy of which is attached as **Exhibit 2**, in which we agreed that I could  
17 develop and a company called Crystal Dynamics, Inc. could publish a 3DO version of *Star*  
18 *Control II* in exchange for payment of an advance and royalties to Accolade. The 3DO version of  
19 *Star Control II* was released in the first half of 1994 with the copyright notice “© 1994 Fred Ford  
20 & Paul Reiche III.”

19. Fred and I later obtained U.S. Copyright Registration No. PA 2-071-496 for the  
20 work titled "Star Control II," which covers all computer program code for that game, and U.S.  
21 Copyright Registration No. PA 2-107-340 for the work titled "Star Control II," which covers all of  
22 the audiovisual and written content in the game, certificates for which are attached as **Exhibits 3**  
23 and **4**.

## *Star Control 3 and 4 and Expiration of the 1988 License Agreement*

27 20. On February 1, 1995, Accolade and I entered into Addendum No. 2 to the 1988  
28 License Agreement, a copy of which is attached as **Exhibit 5**, to allow Accolade to develop and

1 publish “Star Control III” without me but using “characters, names, likenesses, characteristics, and  
 2 other intellectual property rights pertaining to Star Control I and Star Control II in which Reiche  
 3 has an ownership interest,” in exchange for the payment of an advance and royalties to me. *Star*  
 4 *Control 3* was ultimately developed by a company called Legend Entertainment, and published by  
 5 Accolade on or about August 31, 1996 with the notice “based upon characters created and used  
 6 under license from Paul Reiche III and Fred Ford.” *Star Control 3* was not as well-received as  
 7 Star Control I and II.

8       21.     *Star Control, Star Control II, and Star Control 3* are collectively referred to as the  
 9 “Classic Star Control Games.”

10       22.     In January 1997, Accolade met with Fred and me to discuss future plans for the  
 11 Star Control franchise. Accolade offered to purchase all rights to *Star Control I and II* and any  
 12 other Star Control products from me. Accolade acknowledged that Fred and I created and owned  
 13 *Star Control*, including “its themes, settings, plot lines, characters, its ‘essence’ as entity unique  
 14 from any other science-fiction game,” and that *Star Control 3* was created only with Fred’s and  
 15 my permission under agreements with Accolade. We continued to negotiate but could not reach  
 16 agreement on the purchase price or other terms at that time.

17       23.     In November 1997, Accolade asked instead for a perpetual exclusive license to the  
 18 classic background material for *Star Control I and II* for use in a new Star Control game and  
 19 potential future sequels. Accolade stated that “[c]urrently, Accolade owns the rights to the title  
 20 Star Control, and [Reiche and Ford] own the rights to the classic background material created for  
 21 Star Control and Star Control 2,” and that “[Accolade] would like to unify the Star Control license  
 22 . . . .” Fred and I rejected the offer because we believed that our material was worth a lot more  
 23 than Accolade offered, and we wanted to keep the chance to do something with it someday.

24       24.     However, in December 1997, Accolade made another offer to Fred and me and we  
 25 ultimately agreed to a shorter term license to our material. Copies of the aforementioned  
 26 correspondence with Accolade are attached as **Exhibit 6**.

27       25.     Effective April 1, 1998, Accolade and I entered into Addendum No. 3 to the 1988  
 28 License Agreement, a copy of which is attached as **Exhibit 7**, to allow Accolade to develop and

1 publish new versions and sequels to the Classic Star Control Games using “all characters, names,  
2 likenesses, characteristics, plot line, setting, source code, and any proprietary rights that Reiche  
3 has in and to” the Classic Star Control Games, in exchange for the payment of an advance and  
4 royalties to me.

5 26. I understand that Accolade was acquired by Infogrames in or around 1999.

6       27.     Accolade never paid me any advances or royalties under Addendum No. 3 after the  
7 initial advance in 1998 because it never released another Star Control game. Accolade also  
8 stopped paying royalties for sales of the Classic Star Control Games after 2000 at the latest,  
9 indicating that it had stopped selling them. Thus, the 1988 License Agreement and Addenda Nos.  
10 1-3 expired and terminated by April 1, 2001, and all copyrights to *Star Control I and II* and our  
11 materials used in *Star Control 3* reverted to Fred and me on or about April 1, 2001.

## ***Continued Development Through The Ur-Quan Masters and Agreements to Resume Selling the Classic Star Control Games***

14        28.     In mid-2002, Accolade, Fred, and I negotiated regarding transfer of the Star  
15 Control trademark, and Accolade indicated that it was no longer using the name and had no plans  
16 to do so in the future. Nevertheless, we could not agree on terms for a transfer.

17        29.     On August 1, 2002, Fred and I released an open source edition of *Star Control II*  
18 derived from the 3DO version which was free to use in a non-commercial context. As we could  
19 not reach agreement with Accolade to acquire or use the Star Control trademark, we called the  
20 game “The Ur-Quan Masters,” which Accolade knew and did not object to. The game has  
21 remained available and we have continued to use THE UR-QUAN MASTERS mark since then.

22 30. I understand that Infogrames was renamed Atari in 2003.

31. In April 2006, Fred and I spoke with Atari about publishing *Star Control I and II*  
through an online video game service called Gametap, but failed to agree on terms, and we  
informed Atari that we did not wish to renew the expired 1988 License Agreement or proceed with  
any of the potential new deals discussed at that time.

27 32. On or about April 1, 2011, Fred and I learned that a company called Good Old  
28 Games was selling *Star Control I and II* on its website, GOG.com (hereinafter “GOG”), without

1 our permission and in violation of our copyrights. On April 19, 2011, we contacted GOG and  
 2 informed it that GOG could not sell the games without our consent. GOG responded that it was  
 3 doing so pursuant to an agreement with Atari.

4       33. On April 22, 2011, Fred and I notified Atari and GOG that we were the authors and  
 5 owners of *Star Control I and II* and had not given permission for Atari to sell them. We reminded  
 6 Atari that while Accolade once held the publishing rights, such rights expired long ago and that  
 7 any purported agreement by Atari concerning our work violated our rights. However, we invited  
 8 further discussion that might enable the continued publishing of our games by GOG.

9       34. On April 25, 2011, Atari responded that its counsel had checked and Fred and I  
 10 were correct. Atari notified GOG to remove and take down *Star Control I and II* and to remit all  
 11 revenues from sales of the games to Fred and me.

12       35. On April 29, 2011, Fred and I again invited Atari to engage in further discussion  
 13 about how to continue distributing *Star Control I and II*, perhaps by splitting the revenue and  
 14 Atari's allowing the use of the Star Control trademark. Atari agreed to discuss it further.

15       36. In May 2011, GOG and Atari informed us that they had agreed that Atari and we  
 16 would each get 25% of the net revenue from GOG's sales of the Classic Star Control Games.  
 17 Copies of the emails with GOG and Atari containing the aforementioned exchanges are attached  
 18 as **Exhibit 8**.

19       37. On January 2, 2012, we entered into an agreement with GOG to provide it with a  
 20 non-exclusive license to distribute the Classic Star Control Games in exchange for royalties of  
 21 25% of net revenue.

22 ***Stardock Purportedly Buys Star Control Trademark Registration and Star Control 3 Copyright***

23       38. I understand that around January 2013, Atari filed for bankruptcy and put its assets  
 24 up for auction, including the "Star Control Franchise" consisting of some rights to "Star Control  
 25 3," but no rights to the *Star Control I and II* games that Fred and I created and for which we own  
 26 the copyrights.

27       39. Stardock has produced agreements purportedly showing that the rights it bought  
 28 were: a) U.S. Trademark Registration No. 2,046,036 for the STAR CONTROL mark; b) U.S.

1 Copyright Registration No. PA 799-000 for Star Control 3, but the latter could not have included  
2 rights to “characters, names, likenesses, characteristics, and other intellectual property rights  
3 pertaining to Star Control I and Star Control II in which Reiche has an ownership interest” that we  
4 licensed to Accolade under Addendum No. 2 to the 1988 License Agreement.

5        40.      Stardock now claims it also bought exclusive publishing rights to Fred's and my  
6 *Star Control I and II* games under the 1988 License Agreement. This is not possible for at least  
7 three reasons. First, the 1988 License Agreement expired by 2001, when Accolade ceased selling  
8 the games and paying royalties to me. Second, even if it had not expired in 2001, under the 1988  
9 License Agreement, all rights to our games would have reverted to me when the Atari bankruptcy  
10 took more than 90 days to be terminated. Third, the 1988 License Agreement could not be  
11 assigned without my consent, and Atari and Stardock never asked for nor received such consent  
12 from me.

***Stardock Repeatedly Asked to License Our Copyrighted Content for Use in Stardock's New Game, "Star Control: Origins," and We Repeatedly Said No***

15        41.      As described in detail below, from July 2013 to September 2017, Stardock's CEO,  
16 Brad Wardell, asked Fred and me at least eight different times if he could license content from our  
17 *Star Control I and II* games, including the characters, their backstories ("lore"), and ships, for use  
18 in a new game, *Star Control: Origins* ("Origins"), and each time Fred and I said no because we  
19 intended to develop our own sequel. On even more occasions, Wardell assured us that he would  
20 never use any such content without our permission. And at various times in 2013, 2015, and 2017,  
21 we reminded Wardell that we own the copyrights to *Star Control I and II*, and at least a half dozen  
22 times he admitted that we own such rights, including to the characters, their backstories, and ships.  
23 Copies of the emails from and to Wardell containing the exchanges described above and below are  
24 attached as **Exhibit 9**.

25       42. More specifically, on July 22, 2013, Wardell introduced himself to me via email  
26 and said he had acquired Atari's rights to Star Control, and wanted to create a new Star Control  
27 game existing "within the 'universe' that you created." Wardell asked to use our game lore and  
28 universe in exchange for a license agreement with royalties.

1       43.    On July 23, 2013, I responded that Fred and I would consider the request and stated  
 2 that “Fred and I hold the copyrights to Star Control I and II personally ... We also hold the use of  
 3 those copyrights in Star Control III, but do not have any ownership of the new material in that  
 4 product.” Wardell responded “[t]hat is my reading of the agreement too.”

5       44.    On July 24, 2013, Stardock announced its acquisition and plan to release a new  
 6 game inspired by *Star Control II*, but that it would not be a sequel to the Classic Star Control  
 7 Games. Wardell admitted that “Atari doesn’t actually own the copyright on Star Control 1/2 so  
 8 it’s not like one could make a Star Control 2 HD or what have you without a license from Paul  
 9 Reiche.”

10       45.    On July 30, 2013, Wardell asked again to license “the Star Control 1/2 universe  
 11 (aliens, lore, etc.)” from Fred and me.

12       46.    On August 6, 2013, Wardell asked again “would you be interested in pursuing a  
 13 licensing agreement for use of the Star Control 1/2 lore?” He explained that “[w]e’d really like to  
 14 set the new Star Control game with the aliens and lore that you previously created.”

15       47.    On August 14, 2013, Wardell asked again “would you be interested in setting up a  
 16 licensing agreement to use your existing Star Control 1/2 lore and aliens?”

17       48.    On September 16, 2013, Fred and I responded that:

18       Fred and I are just not comfortable handing over our world to be developed by  
 19 others. We’ve been discussing this for almost 20 years and we’ve always regarded  
 20 a return to Star Control as our dream project – something we’d work on as soon as  
 21 we found the opportunity. I know this will be a disappointment for you and your  
 22 team, but Fred and I still have a Star Control plan and we’re not ready to give it up  
 23 yet. Thanks so much for your interest in and appreciation of our work.

24       49.    Later that day, Wardell acknowledged our response, and over the next six weeks,  
 25 tried instead to sell Fred and me “the Star Control IP” that he thought he acquired from Atari.

26       50.    On October 29, 2013, Fred and I responded that “we aren’t interested in the Star  
 27 Control assets you purchased from Atari. Thanks for the offer though.”

28       51.    On January 3, 2014 Wardell gave an interview in which he said that Stardock’s  
 29 new Star Control game would be a “prequel” to *Star Control II* and would include one or more  
 30

1 ships from *Star Control I and II*, as well as the “Super Melee” feature from *Star Control II*. A  
 2 copy of the article describing this interview is attached as **Exhibit 10**.

3       52.     However, later that day he emailed Fred and me that “the new Star Control will not  
 4 make use of the lore/history/aliens of Star Control 1/2 without your express consent.” However,  
 5 he asked again whether we might be willing to allow certain characters from *Star Control I and II*  
 6 to appear in the new game, and offered to pay royalties for licensing our IP from those games.  
 7 Wardell sent another email later that day reiterating that “the new Star Control game will not be  
 8 making use of any of the Star Control 1/2 IP (which in this case means alien names, alien designs,  
 9 lore, art, music, ship designs) without your express permission . . .”

10      53.    On September 24, 2015, Wardell emailed Fred and me and again reiterated that  
 11 “the new Star Control won’t be making use of the lore or aliens from your universe. We’ve made  
 12 sure to post this publicly repeatedly so that there is a written public record that Stardock has zero  
 13 rights to the classic Star Control 2 lore (aliens, ships, story, etc.). The new game will be a reboot  
 14 with its own continuity.” However, he once again asked if Stardock could have certain characters  
 15 from *Star Control I and II* appear in the new game.

16      54.    On October 1, 2015, Fred and I responded once again that we would not license the  
 17 use of certain characters nor “any other classic Star Control elements,” because “Fred and I want  
 18 to keep our copywritten material from Star Control exclusive to our own future project.” Wardell  
 19 acknowledged that this was “[t]otally understandable.”

20      55.    On November 20, 2015, Wardell again reiterated that “[w]e have been making it  
 21 very clear that you and Fred personally own the rights to the Star Control classic aliens and lore  
 22 and that the new game won’t be including them.”

23      56.    On October 12, 2016, Wardell informed Fred and me that the new game would be  
 24 called “Star Control: Origins” (hereinafter, “*Origins*”).

25      57.    On July 28, 2017, Wardell asked us to do an interview in honor of the 25th  
 26 anniversary of *Star Control II*, and he revealed that *Origins* might include the Super Melee feature  
 27 from *Star Control II*, and a ship designer that would enable players to construct and play Super  
 28 Melee with any ship from *Star Control I and II*.

58. On August 1, 2017, Fred and I responded that we were saving our energy for our own anniversary plans, which we were not yet ready to talk about.

59. On September 15, 2017, Wardell emailed Fred and me again that “the Star Control alien IP and such belongs to you personally” and asking if Stardock could “license the Star Control 2 Super Melee ships for the new Super Melee in exchange for a small royalty on every copy of the new Star Control.”

60. On September 29, 2017, Wardell emailed Fred and me stating that Stardock planned to release a beta version of *Origins* called “Super Melee,” and asking if Stardock could use the ships from our game. When we said no, Wardell claimed for the first time that Stardock already had a license to use our intellectual property under the 1988 License Agreement, even though it had terminated and expired in 2001.

61. We later reiterated to Wardell that we planned to release a sequel to "Star Control II - The Ur-Quan Masters" using our intellectual property from the Classic Star Control Games, and that we would not license and did not want Stardock to use any of it.

62. On October 9, 2017, in honor of the 25th anniversary of *Star Control II*, Fred and I finally announced our long-awaited plans to create and develop a new game that would be a sequel to *The Ur-Quan Masters* to be called “Ghosts of the Precursors.”

## ***Stardock's Willful Copyright Infringement***

63. Seemingly in response to Fred's and my announcement and refusal to license our content, in or around October 2017, Stardock began selling the Classic Star Control Games through Steam, a digital distribution platform operated by a company in Washington state called Valve Corporation, without permission from us and in violation of our copyrights. Stardock also began using images from *Star Control I and II* on its website. A screenshot of Stardock's website with links to buy the games through Steam and images from *Star Control II* is as follows:



19        64. In late 2017, Fred and I sent Valve a DMCA notice notifying them of our  
 20        copyrights and requesting removal of the Classic Star Control Games, but Stardock sent Steam a  
 21        counter-notice, and they continued selling the games unabated for several more months thereafter,  
 22        until Stardock agreed to suspend sales at least temporarily.

23        65. Last fall, Stardock also began taking preorders for its forthcoming *Origins* game,  
 24        sometimes bundled with our *Star Control I and II* games, and began releasing information about  
 25        the game that suggests it will infringe our copyrights to the *Star Control I and II* games. In fact,  
 26        as noted above, Stardock has described *Origins* as a “prequel” to and/or “reboot” of *Star Control*  
 27        *II*.

28

1       66. For example, the play pattern appears to be the same in that players of *Origins* will  
 2 travel to and explore new stars and planets and encounter various alien species, just like in *Star*  
 3 *Control I and II*. From the publicly released videos, *Origins* appears to start the same way as *Star*  
 4 *Control II* – with the player piloting a ship named “Vindicator” finding a starbase in orbit around  
 5 Earth. In *Origins*, the starbase Commander is named “Hayes,” who is part of a space force called  
 6 “Star Control,” just like in *Star Control II*. In both games, Commander Hayes tells the player that  
 7 they can improve their ship by finding minerals and bringing them back to the starbase, and a  
 8 friendly alien is found on a nearby moon and joins the player’s fleet. In both games, the player is  
 9 then contacted by a “Probe” ship from a hostile alien race that enslaves other species, says your  
 10 vessel cannot be identified, and demands you remain there until another ship arrives. In both  
 11 games, a hostile alien ship then appears and after a short conversation, attacks you. There are  
 12 additional details about the backstory in *Origins* which are copied from *Star Control II*, such as  
 13 identifying and describing the “Precursors” as an ancient, advanced alien species that explored the  
 14 universe 250,000 years ago but mysteriously vanished, which is the exact same name and  
 15 backstory (even the exact same number of years in the past) of the “Precursors” characters I  
 16 created in *Star Control I and II*. Stardock’s website indicates that another alien race in *Origins* is  
 17 the “Dnyarri,” who are described as having risen to power and dominated the galaxy 20,000 years  
 18 ago, which again is the exact same name and backstory, even down to the same number of years in  
 19 the past, as aliens I created in *Star Control II*.

20       67. On March 21, 2018, Wardell posted online in The Ur-Quan Masters (“UQM”)  
 21 Forum that “[w]e had chosen not to have the Ur-Quan, Spathi, etc. [aliens from Star Control I and  
 22 II] in *Origins* out of respect for Paul and Fred’s wishes. This dispute has changed that position.  
 23 Now, future *Star Control* games will have aliens associated with *Star Control*.” A screenshot of  
 24 the UQM forum, in which Wardell posts under the alias “Frogboy,” containing this post is  
 25 attached hereto as **Exhibit 11**.

26       68. However, on April 7, 2018, he admitted again that “Stardock has no rights to the  
 27 specific characters in *Star Control II* or the story . . . .” A screenshot of the UQM forum containing  
 28 this post is attached hereto as **Exhibit 12**.

1       69. On May 11, 2018, Wardell stated on Stardock's website that contrary to his prior  
 2 statements, “[f]uture Star Control games will have the classic Star Control aliens in them. ... Only  
 3 the most unreasonable person would argue that Star []control games can't have Star Control aliens  
 4 simply because an independent contractor of Accolade's claims rights to names he may or may not  
 5 of randomly generated 28 years ago.” A screenshot of Stardock's online forum containing this  
 6 statement is attached as **Exhibit 13**.

7       70. Later in May 2018, Wardell conducted an informal survey or vote among potential  
 8 purchasers of *Origins* of which aliens to include from *Star Control I and II*. At the end of the  
 9 vote, he announced that several alien races from *Star Control I and II* will also be in *Origins*, and  
 10 that they will play the same roles as in the original game, e.g. the Arilou will be little green men  
 11 who have been watching over earth.

12       71. In July 2018, Wardell confirmed that the Arilou will appear in *Origins*, and  
 13 revealed that *Origins* will include other aliens from *Star Control I and II* called the Chenjesu and  
 14 Melnorme.

15       72. On August 13, 2018, Wardell stated that “Stardock owns the Star Control aliens.  
 16 Paul and Fred \*might\* have copyrights to how those aliens were expressed in Star Control II but  
 17 that's the extent of it. ... Stardock will utilize the Star Control aliens as it sees fit.” A screenshot  
 18 of the UQM forum containing this post is attached hereto as **Exhibit 14**.

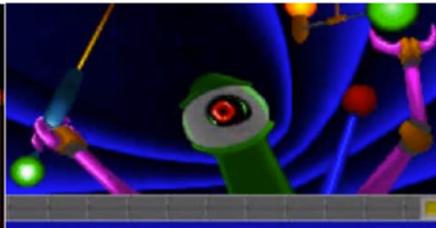
19       73. On August 14, 2018, Wardell admitted that “We expect players to assume that the  
 20 Arilou species [in Star Control: Origins] is related to the Arilou species in SC2 [*Star Control II*].”  
 21 A screenshot of the UQM forum containing this post is attached hereto as **Exhibit 15**.

22       74. Just last week, Wardell stated that “Star Control aliens will be in Star Control  
 23 games based on the needs of the story,” referring to the aliens from *Star Control I and II*. He went  
 24 on to say that “[t]hey also will not appear in other games without our permission,” appearing to  
 25 confirm our suspicion that Stardock will ultimately seek to stop us from using our own characters  
 26 in our sequel. A screenshot of Stardock's online forum containing this statement is attached as  
 27 **Exhibit 16**.

28

1       75.   Stardock has also used on its website images of aliens that are substantially similar  
 2 to and/or derived from aliens from *Star Control I and II*, e.g.:

3 **Yehat & Spathi in Star Control I and II**



3 **Yehat and Spathi on Stardock's Website**



9 **Orz in Star Control I and II**



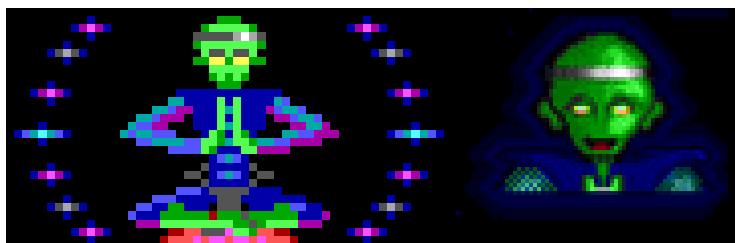
9 **Orz on Stardock's Website**



17       76.   Stardock still has yet to release a complete version of *Origins*, and has refused to  
 18 provide us with a copy to allay our concerns that given all of the above, it seems likely to infringe  
 19 our copyrights. However, Stardock recently released what appear to be parts of the content from  
 20 *Origins* to customers who preorder the game.

21       77.   For example, Stardock released two content packs consisting of names, images, and  
 22 descriptions of characters in *Origins* that are substantially similar to and/or derived from  
 23 characters from Fred's and my *Star Control I and II* games, specifically, the Arilou and the  
 24 Chenjesu alien species.

25       78.   As noted above, Wardell admitted that *Origins* includes characters called the  
 26 Arilou who are from *Star Control I and II*. Besides the identical names, below is a comparison of  
 27 images of the Arilou from *Star Control I and II* and from the *Origins* content pack:

1 **Arilou in *Star Control I and II***13 **Arilou in *Origins* Content Pack**

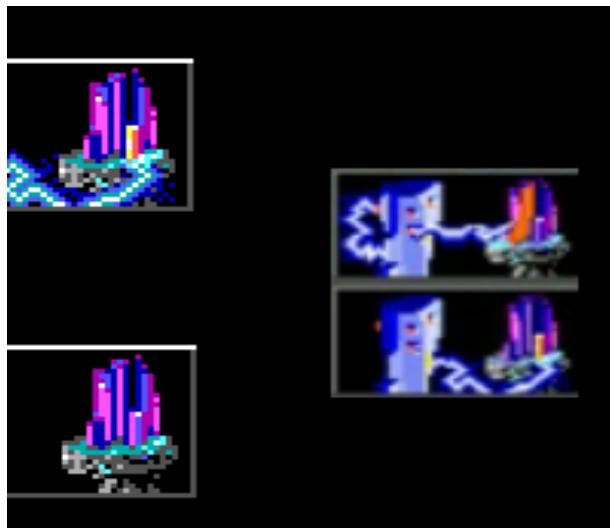
STAR CONTROL  
ORIGINS  
ARILOU

23 79. Stardock's website and content pack describe the Arilou in *Origins* as "a race of  
 24 green-skinned aliens who admit to having been watching the human race for a very long time,"  
 25 and as "'little green men.' Calling themselves the Arilou Lalee'lay, they have apparently been  
 26 watching humanity for a long time. ... they also seem to be almost purposefully mysterious."  
 27 Similarly, the Arilou are described in *Star Control II* as "[t]he Ariloulaleelay are a mysterious race  
 28 ... they do make regular, secret visits to your world, and have done so for centuries." The *Star*

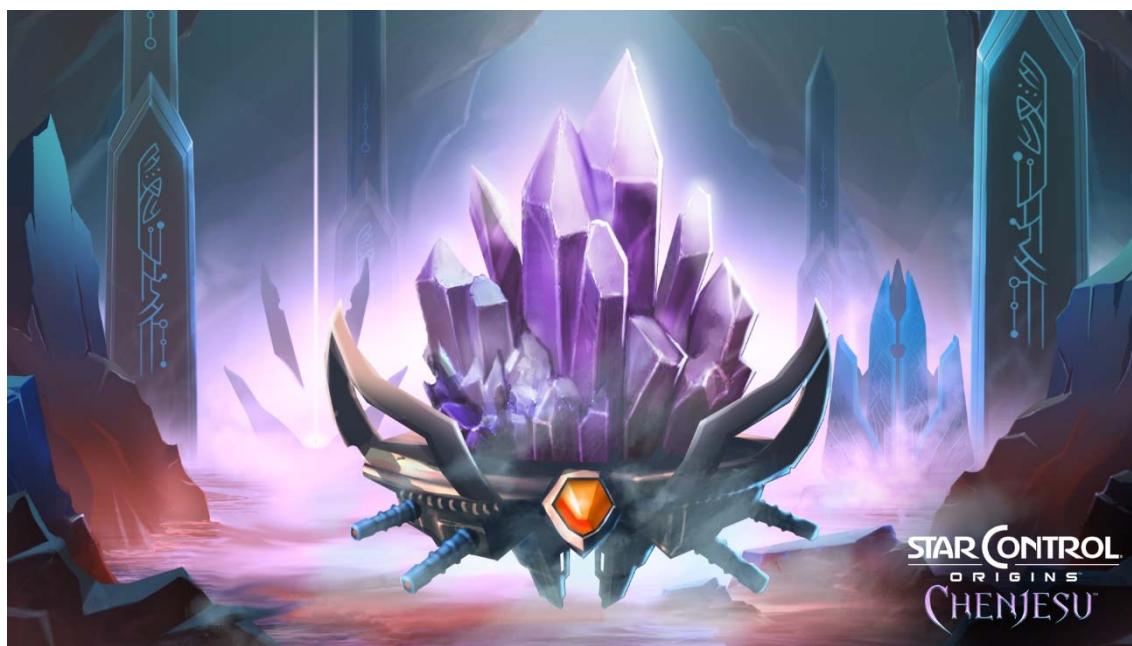
1 *Control II* manual further describes the Arilou as “pale, about 1.5 meters tall, and have large,  
 2 childlike heads with dark, soulful eyes. ... The Arilou may have visited Earth often in the past ...  
 3.”

4       80.     As noted above, Wardell admitted that *Origins* includes characters called the  
 5 Chenjesu who are from *Star Control I and II*. Besides the identical names, below is a comparison  
 6 of images of the Chenjesu from *Star Control* and from the *Origins* content pack:

7 **Chenjesu in *Star Control***



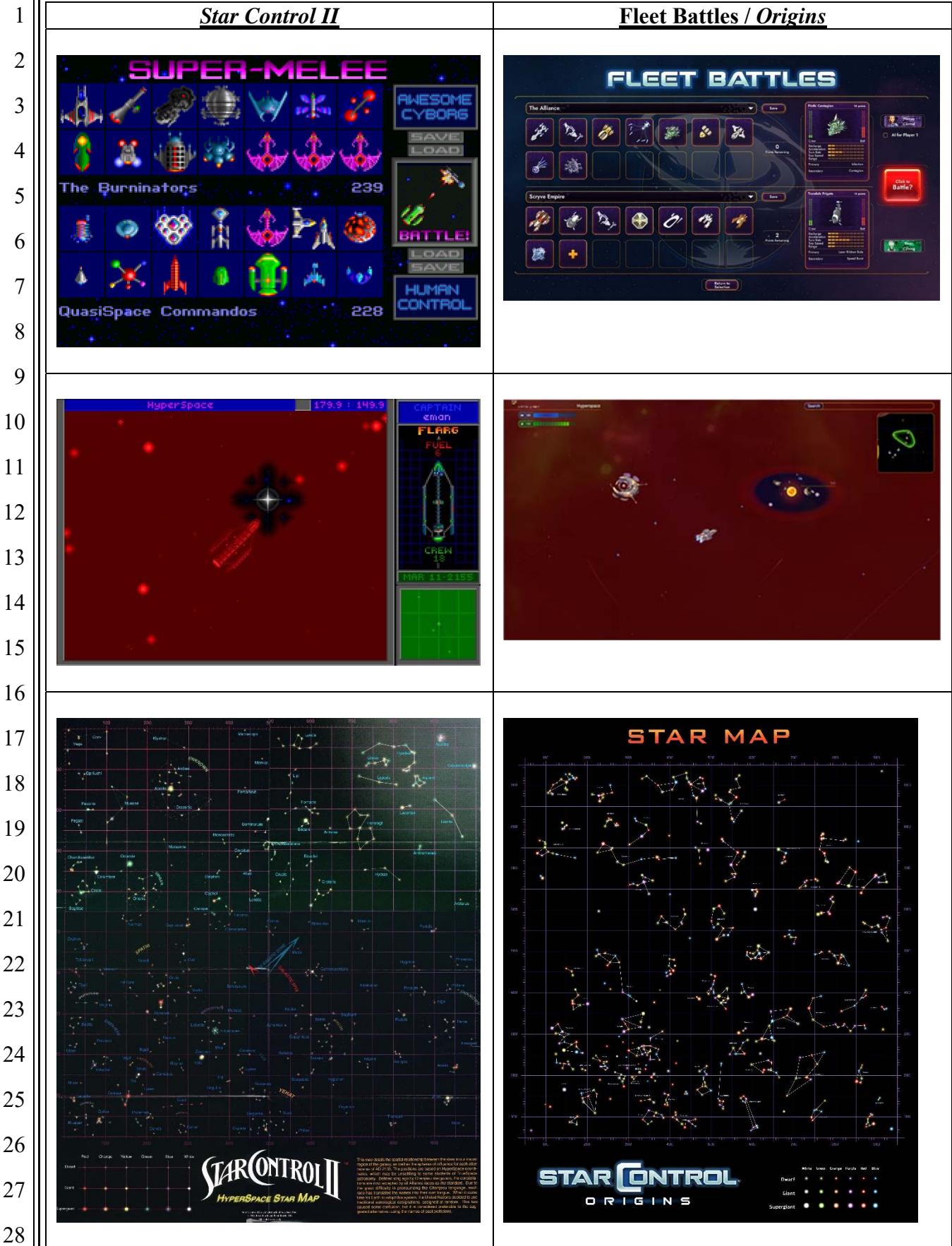
16 **Chenjesu in *Origins* Content Pack**



1       81.    Stardock's website and content pack describe the Chenjesu as "ambulatory crystals  
 2 themselves, who fed on a unique mixture of solar and chemical processes. Peaceful and very  
 3 intelligent" and living on "a strange crystalline world . . ." Similarly, the Chenjesu were  
 4 described in *Star Control* as "[c]rystalline in substance, existing on electric energy," and later  
 5 described in *Star Control II* as having a "silicon-based biology . . . superior to our old carbon  
 6 models," having "fantastic intellects," and being "peaceful," and being "a photo/chemovore (it  
 7 derives its nourishment from light and ambient minerals)."

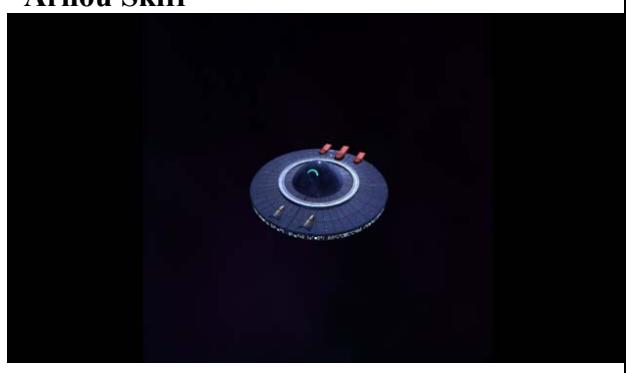
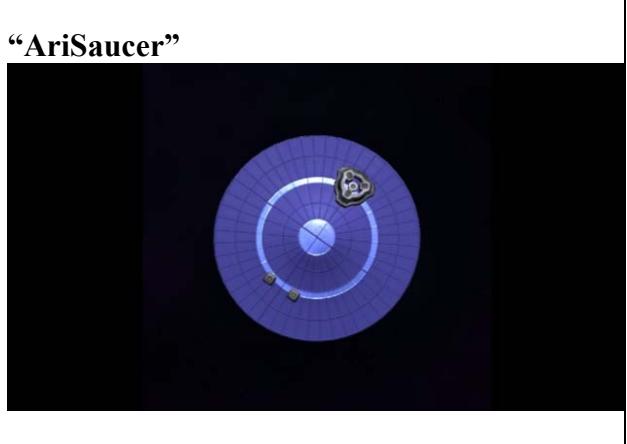
8       82.    In addition to the content packs, Stardock also released a beta version of *Origins*  
 9 that was initially called "Super Melee," and then changed to "Fleet Battles," but that is  
 10 substantially similar to and/or derived from the Super Melee part of *Star Control II* in terms of the  
 11 layout, user interface, functionality, and user experience when playing the game, among other  
 12 things. Various customers who preordered *Origins* and had the opportunity to test another beta  
 13 version of the game before it is released to the larger public have also posted videos of additional  
 14 content that suggests the version of the game to be released on September 20 will be substantially  
 15 similar to and/or derived from *Star Control II* (though again, we do not yet have a copy because  
 16 Stardock has refused to provide one). Below are pictures of material from *Star Control II* as  
 17 compared to material from the Fleet Battles beta and other materials from *Origins* that we found  
 18 online:

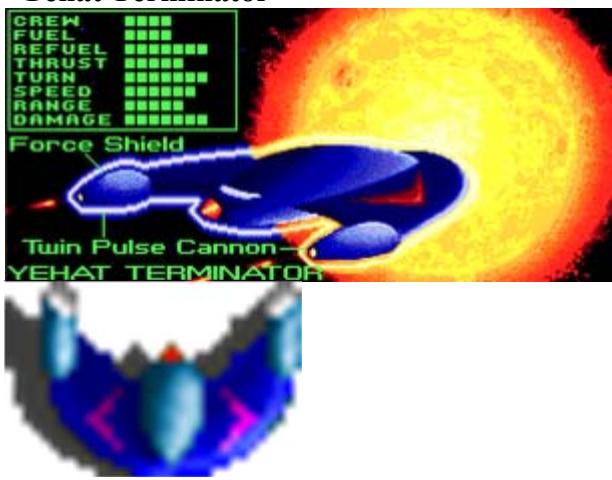
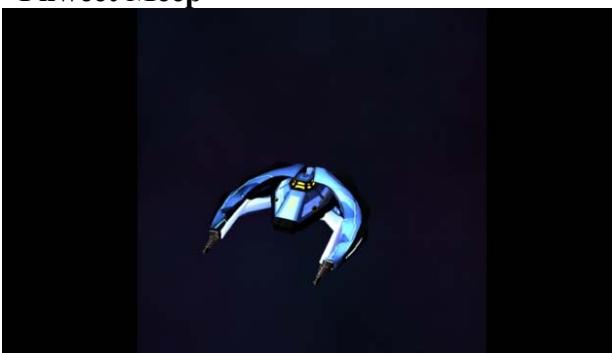
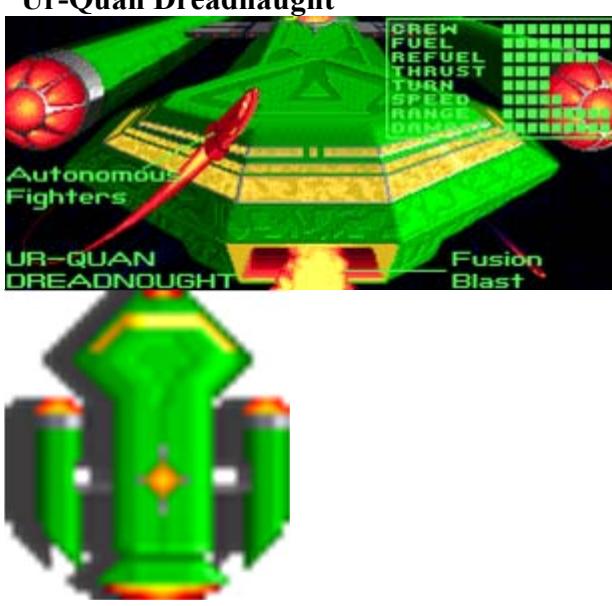
<u>Star Control II</u>	<u>Fleet Battles / Origins</u>
	



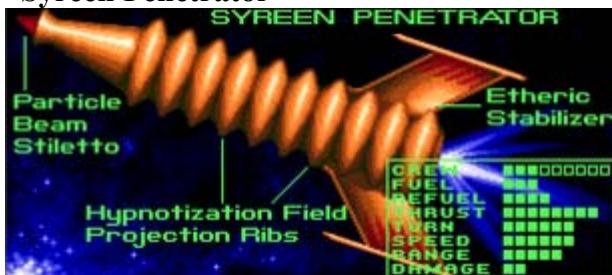
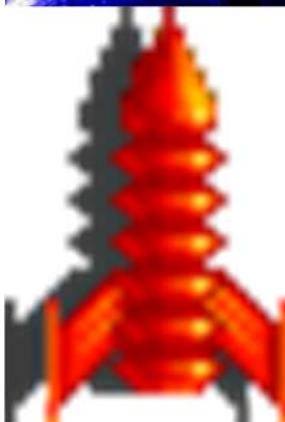
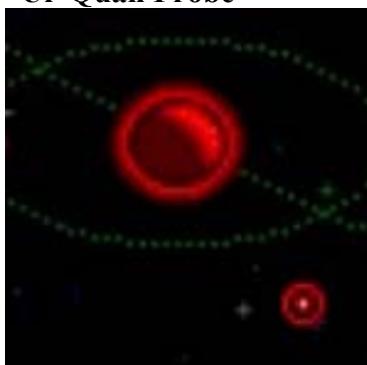
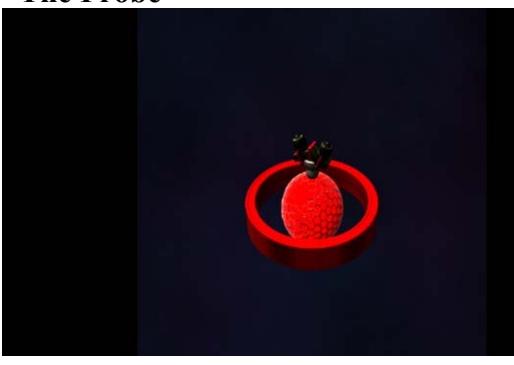
1       83. Moreover, the *Origins* Fleet Battles beta includes a ship-creator tool that allows  
 2 players to easily recreate ships from *Star Control I and II*, which they can then share and Stardock  
 3 then offers and distributes to purchasers of the game. Fred and I have no problem with individual  
 4 users recreating ships from our games for their own personal non-commercial use and enjoyment,  
 5 but we do object to Stardock's using this content for a commercial purpose by offering it to all  
 6 customers who purchase *Origins* in an effort to sell more games.

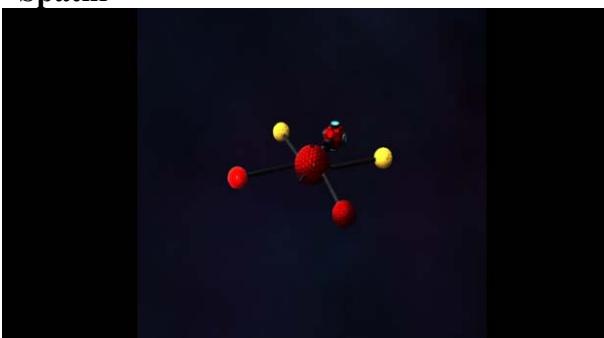
7       84. There are numerous examples of ships that look substantially similar to ships from  
 8 *Star Control I and II*, and in some cases bear the exact same or a substantially similar name as  
 9 well. Below are some examples:

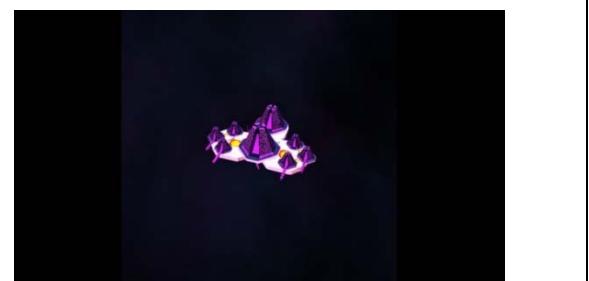
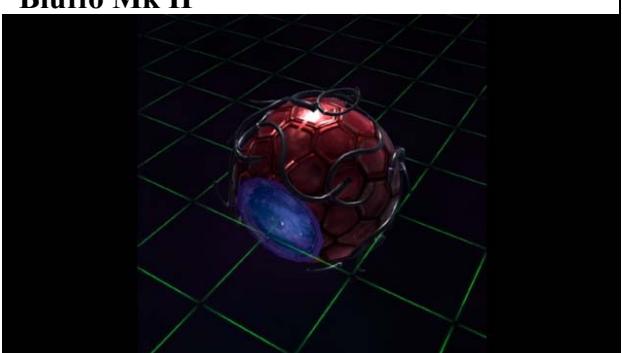
<b><i>Star Control I and II</i></b>	<b>Fleet Battles</b>
<p><b>“Arilou Skiff”</b></p>  <p>“Arilou Skiff”</p> 	<p><b>“Arilou Skiff”</b></p>  <p><b>“AriSaucer”</b></p>

<i>Star Control I and II</i>	<i>Fleet Battles</i>
<p><b>“Yehat Terminator”</b></p> 	<p><b>“Phweet Meep”</b></p> 
<p><b>“Ur-Quan Dreadnaught”</b></p> 	<p><b>“Ur-Quan Dreadnaught”</b></p> 
	<p><b>“UrquanDreadnaught”</b></p> 

<i>Star Control I and II</i>	<i>Fleet Battles</i>
<p><b>“Earthling Cruiser”</b></p> 	<p><b>“Heavy Earth Ship”</b></p> 
	<p><b>“Earth Ship Mk2”</b></p> 
	<p><b>“Retro Earth Cruiser”</b></p> 

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Star Control I and II	Fleet Battles
“Syreen Penetrator”  	“Syreen Penetrator”  “Fellatia” 	
“Ur-Quan Probe” 	“The Probe” 	

<p>1</p> <p><b>Star Control I and II</b></p>	<p>1</p> <p><b>Fleet Battles</b></p>
<p>2</p> <p><b>“Spathi Eluder”</b></p> <p>3</p> <p>CREW FUEL REFUEL THRUST TURN SPEED RANGE DAMAGE</p> <p>4</p> <p>Main Crew Areas</p> <p>5</p> <p>SPATHI DISCRIMINATOR (In Attack Position)</p> <p>6</p> <p>Decoy Projections</p> <p>7</p> <p>Rear-firing Missile Launch Tube</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> 	<p>2</p> <p><b>“Spathi”</b></p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> 
<p>16</p> <p><b>“VUX Intruder”</b></p> <p>17</p> <p>CREW FUEL REFUEL THRUST TURN SPEED RANGE DAMAGE</p> <p>18</p> <p>Gigawatt Laser</p> <p>19</p> <p>Stasis Pulse Energy Storage</p> <p>20</p> <p>VUX INTRUDER</p> <p>21</p> <p>Thrust Nacelles</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> 	<p>16</p> <p><b>“VUX Intruder”</b></p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> 

1	<i>Star Control I and II</i>	Fleet Battles
2	<p>“Chenjesu Broodhome”</p> 	<p>“Brrzzing”</p> 
3	<p>“Chmmr Avatar”</p> 	<p>“Zzzing Brrrzn”</p> 
4	<p>“Mycon Podship”</p> 	<p>“Bluffo Mk II”</p> 

26        85.     Given Fred's and my ownership of the copyrights to *Star Control I and II*, and  
 27     good faith belief that Stardock's publishing of the aforementioned content infringes on our  
 28     copyrights, we served DMCA notices on two of the service providers through which Stardock has  
 2635.000/1328481.7

1 been selling and distributing this content – Valve (on August 17) and GOG (on August 22). We  
2 asked them to disable or remove the allegedly infringing content that we were aware of and  
3 notified them of this action filed against Stardock.

4 86. Since serving the DMCA notices, I understand that Valve and GOG are no longer  
5 selling and distributing the Arilou or Chenjesu packs or Fleet Battles beta, but Stardock has  
6 continued to do so unabated.

7       87.     As noted above, we still have not seen the version of *Origins* to be released on  
8 September 20 because Stardock has refused to provide us with a copy, so Fred and I do not yet  
9 know whether we might serve further DMCA notices on Valve or GOG concerning that version of  
10 the game sometime in the future. I did recently see a video posted last week by someone who has  
11 had the opportunity to test and review some version of the game who said that “I was impressed  
12 by how well *Origins* kept the original feel and style of the classic Star Control games of the 90s”  
13 and that it “reminded me a lot of playing Star Control II.” The video can be viewed here:  
14 <https://youtu.be/umeaSgfmkVI>.

15 I declare under penalty of perjury under the laws of the United States of America that the  
16 foregoing is true and correct, and this Declaration was executed this 17th day of September 2018,  
17 at Novato, California.

Pam R. Holt

PAUL REICHE III